IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11228 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHSANA JILLA KHARID VECHAN SAHAKARI SANGH LTD

Versus

RAMESHKUMAR VITTHALDAS PATEL

Appearance:
MR MJ SHELAT for MR GM JOSHI for Petitioner
MR HM BRAHMBHATT for Respondent

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 06/11/2001

ORAL JUDGEMENT

Rule. Learned Counsel Mr.H.M.Brahmbhatt waives the service of Rule on behalf of the respondent.

2. The petitioner in this petition has prayed to set

aside the order dated 8.2.2000 passed by the Gujarat State Cooperative Tribunal, at Ahmedabad dismissing the appeal for default, filed by the petitioner.

3. The petitioner preferred Arbitration Suit being Lavad Suit No.432 of 1994 against the respondent before the learned Board of Nominees at Mehsana for recovering Rs.3,48,675/- against the irregularity committed by the respondent and that during the audit, further misappropriation to the tune of Rs.7,715.50 ps. was also found. On 27.11.1995 the said suit was dismissed by Shri B.B.Raval, learned Board of Nominees. The petitioner preferred an appeal being Appeal No.44 of 1996 before the Gujarat State Cooperative Tribunal, at Ahmedabad. It appears that in the intermittent period, the learned Board of Nominees has been promoted as a Member of the Gujarat State Cooperative Tribunal in a Bench out of two Benches. On 8.2.2000, the appeal preferred by the petitioner was listed before the Bench where Shri Raval was one of the Members. As the Advocate of the petitioner was busy in a part-heard matter in the Civil Court, he could not remain present in time before the Tribunal and therefore, the Tribunal dismissed the appeal for default under Regulation 15 of the Tribunals. On the same day, the Advocate of the petitioner appeared before the Tribunal and applied for setting aside the said order and to restore the appeal by giving another date. In the said application, it has been specifically stated that the suit was decided by Shri Raval, one of the Members of the Bench. The Tribunal directed the petitioner to apply under Regulation 16 of the Gujarat State Cooperative Tribunal Regulations, 1964 which provides for restoration of appeals, applications for revision and applications for review, to be made within 60 days from the date of communication of the order.

4. As the application was preferred on the same day, I fail to understand as to why the Tribunal directed the petitioner to apply under Regulation 16 of the Tribunal Regulations. The Tribunal could have considered the ground for restoration of the appeal stated in the said application. In my opinion, the ground stated, viz. that the suit itself was decided by one of the Members, Shri Raval, was sufficient for the purpose of restoring the appeal. Apart from that, the Tribunal could have considered the fact that the Advocate of the petitioner was busy in a part-heard matter and in any case, the application itself was filed on the same day, are sufficient reasons for restoring the appeal. Since none of the reasons has been considered by the Tribunal and on the contrary, asked the petitioner to file application

under Regulation 16 which was not at all called for, in my opinion, the present petition is requires recognition and the same is hereby allowed. The order dated 8.2.2000 passed by the Gujarat State Cooperative Tribunal at Ahmedabad, dismissing the appeal for default preferred by the petitioner is set aside. The appeal is restored to file. The Tribunal is directed to decide the appeal after giving fresh date to the parties in accordance with law as expeditiously as possible preferably on or before 15th January 2002. Rule is made absolute, with no order as to costs.

(K.R. Vyas, J.)

Sreeram.